

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Cincinnati Division**

HUNTER DOSTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:22-cv-00084
)	
FRANK KENDALL, <i>et al.</i> ,)	
)	
Defendants.)	
)	

DECLARATION OF MAJOR GENERAL MATTHEW BURGER

I, Mathew J. Burger, hereby state and declare as follows:

1. I am a Major General in the United States Air Force currently assigned as the Deputy to the Chief of Air Force Reserve effective August 8, 2022. The office of the Chief of Air Force Reserve is located at Headquarters, United States Air Force at The Pentagon. The office is responsible as the principal advisor to The Secretary and Chief of Staff of the Air Force and their respective staffs on all matters affecting the Air Force Reserve. Immediately previous to this assignment, from July 2020 to August 2022, I was the Deputy Commander of Air Force Reserve Command headquartered at Robins Air Force Base, Georgia. That office has full responsibility for the supervision of all Air Force Reserve units around the world with approximately 70,000 personnel.

2. I am generally aware of the allegations set forth in the pleadings filed in this matter. I make this declaration in my official capacity and based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

3. The class-wide injunction harms the lethality, readiness, health and safety, good order

and discipline, and unit cohesion of the Air Force Reserve by forcing it to remove individuals from No Pay / No Points status and place them back into a command's units without the protection afforded to meet medical qualification standards.

4. The preliminary injunction degrades lethality because unvaccinated members are more likely to develop serious illness and others will have to cover their duty.

5. The injunction harms readiness, health, and safety because unvaccinated personnel are at a higher risk of developing serious illness or death. Units require members to be healthy and require members to be vaccinated for at least nine different diseases (and sometimes more depending on circumstances). These medical requirements minimize risk, and on the battlefield, mission success depends on minimizing as much risk as possible. Forcing the Air Force Reserve to bear the risk of either returning to duty or preventing imposition of NPNP status of approximately 950 unvaccinated Airmen indefinitely will increase the risk to those Airmen and their units.

6. In my military judgment, special treatment for so many class members will undermine unit cohesion and good order and discipline. Current Air Force policy prevents unvaccinated personnel from certain deployments and other responsibilities, in order to protect the force and minimize risk to the mission. This injunction converted an individualized exemption into an extensive category of either returned-to-duty or preventing imposition of NPNP status of approximately 950 members for an indefinite period of time. Moreover, the injunction forces the Air Force to remove individuals from No Pay / No Points and back into the command's units. Having members of the unit who cannot deploy and leaving others to take on more responsibility will burden vaccinated Airmen who must pick up the slack and will naturally lead other members of the unit to resent class members' special treatment and status.

7. The order purports that “[n]othing in this Order precludes the Department of the Air Force from considering vaccination status in making deployment, assignment, and other operational decisions.” But, in self-contradiction, the order commands the Air Force to remove individuals from a No Pay / No Points status which itself is a core operational decision, as explained more below.

8. Air Force Reserve personnel are divided into several different statuses based on mission and individual needs. The majority of personnel serve in a part-time status as Traditional Reservists (TR). TRs serve during Unit Training Assemblies (UTA) to accrue Inactive Duty Training (IDT) credit for pay, promotion, and/or retirement. UTAs are defined as a “planned period of training, duty, instruction, or test alert completed by a Reserve Unit.” UTAs are commonly performed one weekend per month in order for personnel to fulfill mandatory minimum training and proficiency requirements to meet national security needs. Air Force Reserve personnel may also serve in part-time status as an Individual Mobilization Augmentee (IMA). IMAs are attached to Regular Air Force units and perform duties based on schedules coordinated with the Regular Air Force commands. IMAs also perform duties for pay, promotion, and/or retirement while meeting minimum training requirements. Both statuses also have requirements to perform Annual Training, which is two weeks per year.

9. The Air Force Reserve must ensure qualified personnel with needed skill sets are performing the right duty at the right time to meet the Air Force mission. To do so, local unit commanders must ensure that appropriate funding is available for performance of all duties. Annual UTAs are scheduled in advance and are funded based on the unit’s manpower authorizations. Local unit commanders are the authority for determining whether personnel are qualified to report for and perform duty or be excused. Reasons that personnel in a

participating status might not drill include failure to meet minimum qualifications, unexcused failure to report, or excusal from expected attendance (typically for personal reasons). To meet minimum qualifications, personnel must meet specific training requirements along with dress and appearance, fitness, and medical standards and qualifications.

10. Personnel who meet minimum requirements satisfactorily participate in the Air Force Reserve by earning “good years.” Personnel may earn a good year by accruing at least 50 creditable points in a Retention/Retirement year (R/R year). Personnel may accrue creditable points by attending scheduled UTAs. Because UTA periods are scheduled (and funded) in advance, personnel who meet minimum requirements generally have the opportunity to earn a good year by simply reporting for duty as scheduled. The start date of an individual’s R/R year is determined by the date the individual entered the Reserve. Accordingly, all personnel have different R/R year start dates.

11. Pursuant to the Secretary of the Air Force’s Supplemental Coronavirus Disease 2019 Vaccination Policy, effective as of April 14, 2022, TRs and IMAs without a pending or approved medical exemption request or religious accommodation request who fail to be vaccinated are required to be placed in a “no pay/no points” (NPNP) status and eventually transferred to the Individual Ready Reserve (IRR).

12. NPNP status is a non-drilling status, meaning the member does not perform duty and does not receive credit for pay, promotion, or retirement. For failure to vaccinate, NPNP status can be a transitory precursor to transfer to the IRR. For that purpose, NPNP status immediately takes a member out of drilling status before full transfer to the IRR can be effected—which generally takes a few months—if the member does not rectify the reason for NPNP. NPNP status is an essential step because while a member is in a drilling status (*e.g.*,

TR or IMA), command generally cannot prevent that member participating in drills. The effect of the order allows these members to drill despite a member not meeting minimum qualifications or prevents them from entering that status without being medically qualified.¹ However, should a member be unqualified to perform duty, command must be able to make operational decisions regarding that member's duty, including whether to prevent them from performing duty. Accordingly, in order for command to have authority to make such operational decisions, unqualified members are placed in NPNP status until the disqualifying condition or status is remedied or potentially transferred to the IRR.

13. The Court's order therefore interferes with command's ability to make operational decisions by forcing the Air Force Reserve to remove members from NPNP status or prevent that action. When a member is taken out of NPNP status and placed back into drilling status, command generally cannot prevent that member from performing duty. Accordingly, by forcing the Air Force Reserve to remove members from NPNP status, the court's order forces command to place unqualified members back into operational positions.

14. The Court's order forces the Air Force Reserve to either re-instate or prevent imposition of NPNP status of approximately 950 personnel. Across the command, members currently in or subject to NPNP status due to COVID-19 vaccine refusal span the gamut of duty responsibilities for the Air Force Reserve. Many of these members had primary duties that must be performed hands-on and in person with little potential to social distance, such as security forces officers and medical personnel to pilots and aircraft maintainers. Work

¹ Command may only prevent a member from completing a good year if there are budgetary limits on the relevant units or they are otherwise unqualified to perform duty. As noted, most duty is scheduled (and therefore also funded) in advance, so members generally have the ability to complete a good year by simply attending their scheduled duty. Depending on when their R/R year began and how long they have already been in NPNP status, however, some members may have already missed too much scheduled duty to complete a good year for 2022.

facilities within the command include flightlines, hangars, maintenance shops, traditional office space, medical clinics, and Sensitive Compartmentalized Information Facilities (SCIF) where classified information can be discussed and handled. Many work centers are not conducive to social distancing mitigation measures. Many members serve in leadership positions and perform supervisory duties, which are particularly important to conduct in person within the military setting. By forcing the Air Force Reserve to take these members out of NPNP status and place them back in their normal duties or prevent entrance in NPNP status, the court's order makes operational decisions on behalf of the Air Force Reserve.

15. COVID-19 presents a real, not theoretical, danger to the enterprise. Members can become infected themselves and spread the virus to other uniformed members or civilian counterparts. Outbreaks across the force can and has led to quarantine, mission degradation, and mission failure, in addition to increased risk for long-term medical complications to individual members. Over the past 30 days, approximately 18 Air Force installations have revised upward their Health Protection Conditions and implemented stricter mitigation measures due to increased local community transmission. Personnel stationed at Robins Air Force Base are back in masks in indoor settings. Many Reserve units are co-located with partnering Regular Air Force units, furthering the risk of COVID outbreak to the full-time standing Air Force. Based on prevailing medical opinion, the readily-available COVID-19 vaccination is the most effective measure to prevent "long COVID," other medical complications caused by COVID-19, and severe individual illness. Our people are our essential resource and we must effectively protect them for the future fight to accomplish our mission.

16. I must consider the compelling government issues at stake: mission accomplishment,

readiness, health and safety, good order and discipline, and unit cohesion. These are not merely generic buzzwords but rather are the foundational military principles needed to preserve American liberties and achieve national security objectives through integrated deterrence or armed conflict. Each one of these compelling interests can be the difference between success or failure, life or death. The COVID-19 vaccine advances all of these interests in an increasingly complex global national security environment. Reservists must be trained and ready to respond to global contingencies at a moment's notice and be prepared to deploy—generally within 72 hours. Over the past calendar year, the United States Armed Forces successfully conducted Operation Allies Refuge in Afghanistan (the largest non-combatant evacuation in U.S. history) and re-postured deterrent forces in the European Theater in the wake of Russia's invasion of Ukraine. The Air Force Reserve was an integral part of these efforts. This is not a theoretical exercise. For these reasons and given the unique nature of this pandemic, in my professional military judgment I consider wholesale, worldwide reintegration of unvaccinated NPNP personnel or prevention of that status to be an operational matter that will have significant negative impact across the enterprise.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of August 2022.

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MATTHEW J. BURGER
MAJOR GENERAL, USAF
DEPUTY TO CHIEF OF AIR FORCE RESERVE